IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 597 OF 2001

Shri Khemchand Gemaji Gandhi .. Petitioner.

V/s.

M/s. Hindustan Foundries & Ors. ..Respondents.

Shri P.D. Dalvi for the Petitioner.
Shri A.S. Gadkari, APP for the Respondent No.4-State.

CORAM : A.M.KHANWILKAR, J.
DATED : JANUARY 12, 2005

PC :-

. Heard Shri Dalvi for the petitioner. Pursuant to the notice issued by this court on 23rd July, 2001 M/s. Gagrat and Company, Advocates have entered appearance for respondent No.2. Office note indicates that Respondent Nos. 3 and 4 have been duly served. Shri Gadkari, APP appears for Respondent No.4 -State.

2. The petitioner filed private complaint in the court of Chief Judicial Magistrate, Kolhapur being Criminal Case No. 472/1995 for the offence punishable under section 420 of the IPC and 138 of Negotiable Instruments Act. The Magistrate has discharged the respondents accused solelly on the ground that cause

of action for instituting the complaint had not arisen, in asmuch as after the cheque was dishonoured, the complainant issued legal notice which was duly served on the accused on respective dates in December, 1995 and before expiry of 15 days from the date of service, the applicant already instituted the complaint on 12th December, 1995. This is the only reason for which the accused have been discharged by the trial court, which order has been subsequently confirmed by the revisional court, by the impugned order. The respondent Nos. 1 and 3 though served have chosen not to appear. Resopndent No.2 although has entered appearance through Advocate, none appears for the said Respondent. In fact when this matter was called out in the morning session, the Advocate on record for the petitioner was asked to inform the Advocate on record for Respondent No.2 that the matter will proceed at 2.45 p.m.. He informs that he has already communicated that message to the Advocate on record for the Respondent No.2. However, none appears when the matter is called out after lunch break.

3. The question that arises for my consideration in this petition is clearly covered by the decision of the Apex Court reported in 2001 (1) Mh.L.J.154 in the

case of Narsingh Das Tapadia vs. Goverdhan Das Partani. The Apex Court has taken a view that the complaint cannot be thrown out merely because it has been filed before expiry of the statutory period. In that case, the court can take congnizance only after the statutory period is over. Applying that principle, the view taken by the courts below for discharging the respondents accused cannot be sustained. Accordingly, the orders passed by the courts below which are impugned in this petition are set aside and the complaint is restored to the file of the trial court for being proceeded with in accordance with law.

4. Ordered accordingly.

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